

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35539

STATE OF IDAHO,	)	2009 Unpublished Opinion No. 500
	)	
Plaintiff-Respondent,	)	Filed: June 17, 2009
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
ABIGAIL L. HODGE,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Cheri C. Copsey, District Judge. Hon. A. Marvin Cherin, Magistrate Judge.

Judgment of conviction for failing to perform statutory duties upon striking an unattended vehicle, affirmed.

Grove Legal Services, PLLC, Randall S. Grove, Nampa, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Daniel W. Bower, Deputy Attorney General, Boise, for respondent.

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GRATTON, Judge

Abigail L. Hodge appeals from her judgment of conviction for failing to perform statutory duties upon striking an unattended vehicle. Idaho Code § 49-1303. We affirm.

I.

**FACTUAL AND PROCEDURAL BACKGROUND**

Hodge was charged, as a driver of a vehicle involved in a collision with an unattended vehicle, with failing to notify the owner/operator of the vehicle or leave a written notice of her name and address, along with a statement of the circumstances surrounding the collision. I.C. § 49-1303. Upon trial, the magistrate court found Hodge guilty, imposed a \$300 fine, and ordered restitution in the amount of \$1,131.20. Upon appeal, the district court affirmed the conviction but reversed the order of restitution. Hodge appeals her conviction.

## II. ANALYSIS

Hodge claims that there was insufficient evidence presented at trial to sustain the finding of guilt. Specifically, Hodge claims that the evidence presented at trial was insufficient to support the findings as to: (1) whether Hodge caused damage to the unattended vehicle, and (2) whether Hodge was aware of the collision.

On review of a decision of the district court, rendered in its appellate capacity, we review the decision of the district court directly. *State v. DeWitt*, 145 Idaho 709, 711, 184 P.3d 215, 217 (Ct. App. 2008). Appellate review of the sufficiency of the evidence is limited in scope. A finding of guilt will not be overturned on appeal where there is substantial evidence upon which a reasonable trier of fact could have found that the prosecution sustained its burden of proving the essential elements of a crime beyond a reasonable doubt. *State v. Herrera-Brito*, 131 Idaho 383, 385, 957 P.2d 1099, 1101 (Ct. App. 1998); *State v. Knutson*, 121 Idaho 101, 104, 822 P.2d 998, 1001 (Ct. App. 1991). We will not substitute our view for that of the trier of fact as to the credibility of the witnesses, the weight to be given to the testimony, and the reasonable inferences to be drawn from the evidence. *Knutson*, 121 Idaho at 104, 822 P.2d at 1001; *State v. Decker*, 108 Idaho 683, 684, 701 P.2d 303, 304 (Ct. App. 1985). Moreover, we will consider the evidence in the light most favorable to the prosecution. *Herrera-Brito*, 131 Idaho at 385, 957 P.2d at 1101; *Knutson*, 121 Idaho at 104, 822 P.2d at 1001.

The evidence adduced at trial was that on December 13, 2006, a Wal-Mart employee parked her pickup in the store parking lot. After work, she noticed a deep dent in the pickup which had not been there when she parked earlier in the day. She also found a note left on the windshield. The note was left by Karen Rowles. Rowles indicated in the note that she had seen a lady driving a green Expedition hit the pickup and provided the license plate number and Rowles' telephone number. Investigating Officer Warren also noticed a large dent in the pickup. On cross-examination, Officer Warren indicated that there would not necessarily be paint transfer or damage to the striking vehicle. Rowles testified that she observed the Expedition swing into the parking space and hit the pickup. The Expedition then backed up and pulled into the parking space the correct way. The driver of the Expedition got out, walked around the back, got back in, sat there, then got out again and went into the store. On cross-examination, Rowles testified that the pickup "literally moved," and that it "jumped." Rowles saw a deep dent in the

pickup and, after observing that the driver of the Expedition had not left a note, left her own note as described above. Hodge acknowledged driving a green Expedition and parking in the Wal-Mart parking lot on the day in question. However, Hodge denied knowledge of colliding with a vehicle in the Wal-Mart parking lot. Hodge testified that there was no paint transfer or damage to the Expedition, to which the State stipulated. Lastly, Hodge testified that she told Officer Warren that “if I caused damage, I was willing to pay for damages.”

The magistrate court found:

I find the testimony of Ms. Rowles to be compelling. She saw an accident, and she clearly saw the defendant’s vehicle and the victim’s vehicle. And she said she saw the vehicle, the pickup, actually move.

I find that to be a fact. I think that’s supported by the evidence. When I couple that with the rest of the testimony and, particularly, the defendant’s testimony that I am willing to pay for damage if I caused it, to me, that shows -- if she made a statement that she was willing, I think that’s -- that’s kind of an acknowledgement that she might have hit it.

I find that she did, indeed, willfully strike the vehicle and that she knew that she had hit it. I find the defendant guilty.

Hodge contends that the lack of paint transfer or damage to the Expedition weighs against the finding that she caused the damage, i.e., that a collision occurred. Hodge further contends that her actions, including going into the store without moving her vehicle to another parking space or leaving the scene, not looking at the pickup for damage, and promptly returning Officer Warren’s call and acknowledging to her that she had been driving the Expedition, are indicative of her lack of knowledge of the collision.

As noted, in regard to a claim of insufficiency of the evidence, we consider the evidence in the light most favorable to the prosecution, and if there is substantial evidence upon which a reasonable trier of fact could have found that the prosecution sustained its burden of proving the essential elements of a crime beyond a reasonable doubt, the finding of guilt will not be overturned. *State v. Herrera-Brito*, 131 Idaho at 385, 957 P.2d at 1101. Substantial evidence does not mean that the evidence need be uncontradicted. All that is required is that the evidence be of sufficient quantity and probative value that reasonable minds could conclude that the decision of the finder of fact was proper. It is not necessary that the evidence be of such quantity or quality that reasonable minds must reach the conclusion, only that they could so conclude. *Mann v. Safeway Stores, Inc.*, 95 Idaho 732, 736, 518 P.2d 1194, 1198 (1974). Rowles’ testimony that the Expedition hit the pickup is sufficient to support the finding of the fact of the collision. Officer Warren, the pickup owner, and Rowles all testified that the dent in the pickup was deep or large. Rowles testified that upon being

struck the pickup “jumped,” and “literally moved.” Rowles testified that the driver got out, walked around the back of her vehicle, got back into her vehicle and sat for a period of time before walking into the store. This evidence is sufficient to support the reasonable inference that Hodge was aware of the collision. In addition, the magistrate court’s inference, based upon hearing all of the testimony and observing the demeanor of the witnesses, that Hodge was aware of the collision by virtue of her expression of willingness to pay for any damage she may have caused, is reasonable, although subject to differing interpretations. After carefully reviewing the entire record, substantial evidence was presented at trial upon which the trier of fact could find the essential elements of the charge beyond a reasonable doubt.

### **III.**

#### **CONCLUSION**

Substantial evidence presented at trial supports the magistrate court’s finding of guilt. Therefore, Hodge’s judgment of conviction is affirmed.

Chief Judge LANSING and Judge GUTIERREZ, **CONCUR.**